

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LARIN SHINE,

Plaintiff,

-against-

JAMIE ANDERSON,

Defendant.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 10/26/2023

23-CV-0387 (NSR)

SUPPLEMENTAL
ORDER OF SERVICE

NELSON S. ROMÁN, United States District Judge:

Plaintiff Larin Shine, of Mt. Vernon, Westchester County, New York, brings this pro se action asserting claims under the Court's diversity jurisdiction. Plaintiff sues Defendant Jamie Anderson, of Newtown, Bucks County, Pennsylvania, and seeks \$5 million in damages.

By order dated January 19, 2023, the court granted Plaintiff's request to proceed in forma pauperis ("IFP"), that is, without prepayment of fees. By Order dated March 17, 2023, the Court directed service of the complaint and the declaration (ECF Nos. 2, 5) on Defendant.

On June 23, 2023, U.S. Marshals Service filed a process receipt and return of service unexecuted indicating that service of the summons and complaint was unsuccessfully attempted once on June 12, 2023, and twice on June 13, 2023.

In a letter dated October 3, 2023, Plaintiff requested that the Court issue a new summons on Defendant.

DISCUSSION

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process

. . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP).

If the complaint is not served within 90 days after the date the summonses are issued, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service). However, the Court may extend the time for service if a plaintiff demonstrates good cause. *George v. Pro. Disposables Int’l, Inc.*, 221 F. Supp. 3d 428, 432 (S.D.N.Y. 2016). Although Plaintiff did not request an extension of time for service within 90 days, Plaintiff indicated that he did not receive mailed notice of the failed service, and only became aware of it after calling to check on the status of the case. Therefore, Plaintiff has demonstrated good cause and the Court extends the time for service.

Fed.R.Civ.P. 4(e) provides that “service upon an individual from whom a waiver has not been obtained and filed ... may be effected in any judicial district of the United States: (1) pursuant to the law of the state in which the district court is located, or in which service is effected” Under New York law, extraterritorial service may be effectuated using N.Y.C.P.L.R. § 308(4). *See* N.Y.C.P.L.R. § 313; *Weimer v. Lake*, 268 A.D.2d 741, 702 N.Y.S.2d 155 (3d Dep’t 2000). N.Y.C.P.L.R. § 308(4) allows service to be effectuated by “affixing the summons to the door of Individual Defendants’ actual place of business, dwelling, or usual place of abode,” referred to as “nail and mail.” *Murray v. Watertown Cardiology, P.C.*, No. 7:07-CV-748(TJM/GJD), 2007 WL 4298524, at *1 (N.D.N.Y. Dec. 5, 2007).

To allow Plaintiff to effect service of the complaint and the declaration on Defendant through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for Defendant. The Clerk of Court

is further instructed to issue a summons for Defendant and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service of the complaint and the declaration upon Defendant. The Marshals Service is further directed to effect service pursuant to N.Y.C.P.L.R. § 308(4).

CONCLUSION

The Court directs the Clerk of Court to issue a summons for Defendant; complete a USM-285 form with the address of Defendant; and deliver all documents necessary to effect service of the complaint and the declaration (ECF Nos. 2, 5) on Defendant to the U.S. Marshals Service.

The Clerk of Court is further directed to mail a copy of this Order to Plaintiff at the address listed and to show service on the docket.

SO ORDERED.

Dated: October 26, 2023
White Plains, New York



NELSON S. ROMÁN
United States District Judge

DEFENDANTS AND SERVICE ADDRESSES

Jamie Anderson
31 Honey Locust Lane
Newtown, Pennsylvania 18940